



National Crime Prevention and Privacy Compact
COMPACT COUNCIL MEETING
WASHINGTON, DC
OCTOBER 9-10, 2002

MINUTES

The meeting of the Compact Council was called to order at 9:00 a.m. on October 9, 2002, in the Vista Ballroom of the Wyndham Hotel, Washington, DC, by Compact Council Chairman Wilbur Rehmann. In Chairman Rehmann's opening remarks, he noted that he had received three proxies for the meeting: Mr. Joe Bonino representing Mr. Frank Sleeter for the CJIS Advisory Policy Board, Mr. Michael Powers representing Ms. Diane Schenker, and Mr. David Yandell representing Lt. Cliff Daimler.

Ms. Cathy Morrison, Interim FBI Compact Officer, called roll of the Compact Council members. The following Compact Council members, or their proxies, were in attendance.

State Compact Officers:

- Mr. Rusty Featherstone, Oklahoma State Bureau of Investigation
- Lt. Col. Jeff Harmon, Maine State Police
- Mr. Paul Heppner, Georgia Bureau of Investigation
- Mr. Wilbur Rehmann, Montana Department of Justice
- Ms. Donna Uzzell, Florida Department of Law Enforcement
- Major Mark Huguley, South Carolina Law Enforcement Division
- Mr. Michael Powers, Ohio Bureau of Criminal Identification and Investigation (proxy for Ms. Diane Schenker, Alaska Department of Public Safety)
- SFC John H. O'Brien, New Jersey Division of State Police
- Mr. David Sim, Kansas Bureau of Investigation

State/Local Criminal Justice Agency Representative:

- Mr. David Yandell (proxy for Lt. Clifford Daimler, Oregon State Police)

Federal Noncriminal Justice Agency Representative:

- Ms. Kathy Dillaman, Office of Personnel Management

Federal Criminal Justice Agency Representative:

- Ms. Winona Varnon, Transportation Security Administration

Advisory Policy Board Representative:

- Mr. Joseph Bonino (proxy for Mr. Frank Sleeter, Sun Prairie Police Department)

Federal Bureau of Investigation:

- Mr. Michael Kirkpatrick, FBI, CJIS Division

Chairman Rehmann commented many audience members also attended the symposium the previous day. He received positive feedback from the symposium and encouraged all symposium participants to attend future meetings of the Compact Council. He stressed that the Council meetings were open to the public and meeting notices were published in the Federal Register.

Meeting attendees in the gallery introduced themselves and the agency they represented (See Attachment 1).

As the first item of business, Chairman Rehmann provided the Council with an update on the Dispute Adjudication Rule. At the May 2002 meeting, the Compact Council considered and adopted the majority of the comments received from the Department of Justice (DOJ) on the Rule. Subsequently, Mr. Frank Campbell, DOJ requested an additional opportunity for review and comment. Chairman Rehmann reported that DOJ provided no further substantive changes to the Rule. The proposed Rule is now pending publication in the Federal Register.

The next item of business was the approval of the minutes from the May 2002 meeting.

Compact Council Action: Major Mark Huguley made a motion to approve the May 2002 minutes. The motion was seconded by Lt. Col. Jeff Harmon. The motion carried.

Next, Mr. Paul Heppner, Georgia Bureau of Investigation, presented the proposed changes to the Compact Council Bylaws. These changes (indicated by *italics* and underlined text) were previously discussed at the May 2002 meeting. The proposed changes are as follows:

7.3 TERM OF OFFICERS

~~The Chairman and Vice Chairman of the Compact Council shall serve two-year terms. They may each be reelected to only one additional two-year term. [The term of the officers shall be two years in duration. An officer may not serve more than two terms consecutively in an elected capacity the same office.]~~

8.7 OPEN SESSIONS

Meetings of the Compact Council shall be in open session. Meetings shall be open to the public on a first-come, first seated basis. Any member of the public may file a written statement concerning matters related to the concerns and activities of the Compact Council. Anyone wishing to address a session of a Compact Council meeting should notify the FBI's Compact officer at least 24 hours prior to the start of the session. The notification should contain the requestor's name and corporate designation, consumer affiliation, or government designation, along with a short statement describing the topic to be addressed, and the time needed for the presentation. **[Vendors will not be permitted to promote products or make sales presentations while the Council meeting is in open session- without the approval of the Chairman.]** The Chairman of the Compact Council shall have the discretion whether or not to recognize a requestor, who

has provided the proper notification, as a speaker at a Compact Council meeting. Requestors shall ordinarily be allowed not more than 15 minutes to present a topic. Notifications and inquiries shall be addressed to: FBI Compact Officer, FBI, CJIS Division, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0145, telephone (304) 625-2000.

Compact Council Action: *Mr. Paul Heppner made a motion to approve the proposed changes to the Compact Council Bylaws. The motion was seconded by Ms. Winona Varnon. The motion carried.*

Chairman Rehmann next initiated/addressed agenda items.

Topic #1 **Standards Committee Report on Expansion of Current Audit Programs to Include Authorized Noncriminal Justice Agencies that have Direct Access to the Interstate Identification Index (III)**

Lt. Col. Jeffrey Harmon, Maine State Police, presented this topic. Council members had summarily discussed this topic in January 2002 and took no action on the topic at that time. The topic was deferred to the Standards Committee for review. The following points of discussion resulted from the Standards Committee meeting: 1.) Standards should be set which would be incorporated through the state audit programs, not through audits of the end user by the FBI audit staff, 2.) When there is a direct interface to CJIS systems (i.e., IAFIS, III) from channeling agencies as characterized in the concept of privatization or federal legislation that authorizes regulatory agency direct access to the FBI, the FBI should conduct audits of those agencies using similar standards that are applied to the states, and 3.) The Committee discussed the need to amend the emergency placement rule to include specific language on the audit process for direct terminal access for Purpose Code X.

Compact Council Action: *Lt. Col. Harmon made a motion to endorse the concept of expanding audits to include authorized noncriminal justice agencies that have direct access to the Interstate Identification Index. The motion was seconded by Mr. Paul Heppner. The motion carried.*

Compact Council Action: *Lt. Col. Harmon made a motion to refer [to the Standards Committee] the issue of developing specific language as an amendment to Purpose Code X and the emergency placement rule that makes it explicit that state audits are required. The motion was seconded by Mr. Michael Kirkpatrick. The motion carried.*

Topic #2 Generation of IAFIS Responses Independent of the Submission Methodology

Mr. Roy Weise, Designated Federal Employee, FBI CJIS Division, provided the following status report: Historically under the manual system agencies could submit fingerprints through a channeling agency; however, the channeling agencies were not authorized to receive the criminal history responses. The responses were provided directly back to the authorized or contributing agency. The same type of alternative has been proposed as an interim solution, utilizing portions of today's technologies allowing channeling agencies to submit electronically; however, a mailed response is provided directly to the contributing agency. Mr. Weise reported this mechanism was put in place with the American Bankers Association in March 2002. This capability will also be extended to states agencies. A letter will be forthcoming within the next few weeks detailing the type of transaction that may be used for electronic submissions with generated manual responses to the contributor. Mr. Weise mentioned that states wishing to participate should contact a CJIS System Transition Unit representative.

Compact Council Action: *This topic was accepted as information only.*

Topic #3 Report on Privatization

Mr. Danny Moyer, FBI CJIS Access and Integrity Unit, presented the following update on privatization: Privatization for criminal justice purposes has been permitted for about three years. More recently, events and business needs have prompted both the CJIS Advisory Policy Board (APB) and the Compact Council to consider the issue of privatization for noncriminal justice purposes. At the June APB meeting in Chicago, Lt. Col. Harmon and Ms. Kathy Dillaman asked CJIS to determine the viability of utilizing channeling agencies under contract with the FBI, whereby channeling agencies could submit fingerprints to the FBI, receive the criminal history response, and then disseminate it to the authorized recipient.

After due consideration, FBI legal staff conclusions support the concept. Ms. Robin Stark, Unit Chief, CJIS Audit Unit, determined that CJIS audit staff could accommodate audit responsibilities for at least fifty channeling agencies. CJIS technical experts determined that hook up/connection costs to be approximately \$23,000 per line and could be incrementally phased in over a three year period. Mr. Moyer suggested that if the Compact Council were to endorse the privatization concept, some of the expense might be borne by the channeling agency, thus alleviating the FBI risk and expense that would be incurred with potential low volume channeling agency. Channeling agency should not circumvent or bypass required state or federal submission workflow.

Lt. Col. Harmon commented that the original concept was very similar to allowing authorized criminal justice entities to engage a third party as the agent to help process work. Lt. Col. Harmon said there appears to be a general consensus for states or federal agency to engage a third party to assist with noncriminal justice work. The second issue, which has not been fully resolved, had to do with the use of channeling agencies. Lt. Col. Harmon suggested the first step in the process could be publishing a notice in the Federal Register, stating the intention of moving in the direction of privatization for noncriminal justice purposes. In the

interim, Lt. Col. Harmon suggested continuing the work on details with the CFR Ad Hoc Committee and to develop a proposed rule for the Council to review at the next meeting.

Council members generally discussed cost factors and consented that applicable fees should be the responsibility of the channeling agency and not a fiscal burden to the FBI. Lt. Col. Harmon acknowledged that the Council has endorsed privatization for the state and federal agencies and suggested that the Council go on record, endorsing privatization for channeling agencies as well. A notice in the Federal Register could state the Council's general intent, followed up with details in a promulgated rule.

Ms. Donna Uzzell, Florida Department of Law Enforcement, asked if there had been any discussions concerning end to end dissemination and retention of the Criminal History Record Information (CHRI). An audit trail is necessary for accountability under the Privacy Act. Lt. Col. Harmon recognized that not all aspects had been defined by the Committee, but suggested publishing the notice in the Federal Register, to foster relevant input. Chairman Rehmann tasked the CFR Ad Hoc Committee to continue its work on these issues and appointed Ms. Uzzell to serve on the Committee.

Compact Council Action: *Lt. Col. Harmon made a motion to publish a notice in the Federal Register with the Council's intent to promulgate a privatization rule that covers the use of third parties acting as an agent for a state or federal entity and/or as a channeling agency. The motion was seconded by Major Mark Huguley. The motion carried.*

Topic #4 Emergency Child Placement Rule Revisions

Mr. Moye, presented suggested revisions to the Emergency Child Placement Rule. As the Emergency Placement Rule was published in May 2001, it specifically identified Public Law 92-544 as the prerequisite for state use of III for the emergency placement. Shortly after the publication of this Rule, Mr. Moye received a call from the Immigration and Naturalization Service (INS) regarding federal application. The Rule itself did not include specific language for federal agency use of Purpose Code X. However, Council members determined this would be considered permissible. CJIS staff drafted a proposed change to the Rule that would allow federal agencies to request permission from the Compact Officer. Federal agencies would have to comport with the Council guidelines, as does state emergency placement use of the III. Federal noncriminal justice agencies would not have direct access to III; however, the checks could be conducted by the law enforcement component of the federal agency in question. To date, only one state has requested direct access for the noncriminal justice agency to conduct the emergency child placement checks. All other states exercise a law enforcement component for this function.

Mr. Moye next presented the proposed changes to the Rule. The proposed changes add a subpart as follows:

(d) Part 901 is also applicable to any federal agency pursuant to Title 28, United States Code, Section 534, for purposes approved by the Compact

Council, provided that name-based checks are conducted by the agency's law enforcement component or by another law enforcement agency. A federal agency may submit its request for delayed submissions by forwarding an application to the FBI's Compact Officer.

Chairman Rehmann recalled from previous discussions that federal agencies needed this language to participate and the Council posed no objection on moving forward with this proposal. Chairman Rehmann suggested that the Council adopt the proposed change. Other issues relevant to the Rule could be addressed if/when they come to light.

Compact Council Action: Major Mark Huguley made a motion to adopt Section D on page 10 of the Fingerprint Submission Requirements Rule. The motion was seconded by Lt. Col. Harmon. The motion carried.

Lt. Col. Harmon suggested that staff delay publishing the Rule until verbiage to include state audit requirements was established in the Rule.

Another issue that concerned Lt. Col. Harmon was the time frame for delayed submission. At the May 2002 Council meeting there was discussion on the meaning of the term "submission." Council members discussed if the word submitted meant the timeframe in which fingerprints had to be (1) forwarded to the state repository; (2) received by the state repository, or (3) forwarded to the FBI by the state repository. The Standards Committee will continue this discussion at its January 14-15, 2003 meeting.

Ms. Uzzell suggested that the submission period could be interpreted to be the time frame to reach the state repository. States should be required to clearly track and provide as necessary, documentation to indicate receipt of the fingerprint submission at the repository. The audit requirement should be delineated in the Rule in such a way that it is clear that states are held responsible for auditing agencies which access III for emergency child placement purposes.

Chairman Rehmann commented from the minutes of the May 2002 meeting that New Jersey, Florida, and Alaska wished to continue discussions on the submission time frame, and that each state was to prepare a written justification for an extension prior to the next Council meeting. Chairman Rehmann did not receive any written requests prior to the October 2002 meeting. Chairman Rehmann suggested further discussion on the topic be tabled until such time as further information with specific justification is received. He also suggested that states be prepared to advocate the basis for such requests at the February 2003 meeting.

Ms. Uzzell had concerns over the changes to the definition of "submitted". Mr. Harmon stated the intent of the discussions was to clarify what "submission" meant and was not in anyway to impact the ongoing operations of states that were using Purpose Code X.

Compact Council Action: Ms. Uzzell made a motion that Florida be given the opportunity to continue with the five day rule (interpreted to mean submitted to the state repository) until the next meeting. Ms. Uzzell will bring forth a proposal to extend the number of days to the next meeting. The

motion was seconded by Mr. Paul Heppner. The motion carried.

Ms. Cathy Morrison, Interim FBI Compact Officer, further clarified the motion by stating that the motion would apply to states authorized to use Purpose Code X, not limited specifically to Florida.

Topic #5 Ten Print/Hot Check

Mr. Weise presented this topic. Agencies that submit prints, particularly for security clearance background checks have expectations that a fingerprint check includes a warrant check of NCIC. However this automated process of checking NCIC warrants does not exist. Some states have provisions at the state identification bureau to generate a NCIC check and also examine the name based response to determine the likelihood that it is the same person.

The user community requested this dual check be facilitated at the national level. Since 9/11 the issue has become more critical, therefore steps have been taken to include the individuals from the NCIC Violent Gang and Terrorist Organization File (VGTOF) into IAFIS as a name stop only. The FBI has created a manual process to follow up on the hits and to notify the entering agency. Mr. Weise suggested automating this process, alleviating the need for manual intervention. CJIS anticipates a rapid expansion of entries into VGTOF, of at least ten-fold, causing the manual process to quickly become unmanageable. Mr. Weise asked for suggestions from the Council on how to formulate a solution to this. One issue to consider is to what extent and what types of files should be used in this manner. Would all NCIC persons files be used, such as VGTOF, Warrants, Sex Offender Registry, Protection Order Files. Also would these dual checks be used for both criminal and applicant fingerprint submissions? Previous feedback indicates some states may have statutes which preclude sharing this data for other than criminal justice purposes. Mr. Weise stated once a working concept is developed, the topic will return to the Council for consideration and approval.

Compact Council Action: *This topic was accepted as information only.*

Topic #6 Legislative Update/Review

Mr. Kevin Corr, CJIS Access and Integrity Unit Chief, FBI CJIS, presented an overview on legislative activity (See Attachment 2). Since 9/11, there has been an increase in the number of state statutes, to conduct preemployment background checks. One noteworthy legislative effort is the recent amendments to the National Child Protection Act. The bill as currently drafted would amend the NCPA/VCA to require fingerprint checks to be submitted through the state repository to the FBI. The Compact Council would provide guidance to the states and ensure background checks comply with the National Crime Prevention and Privacy Compact. The bill would also create a permanent committee to include members from national organizations representing private nonprofit entities. Mr. Corr next presented background information on the competing Biden and Dewine bills. Mr. Corr was reluctant to voice an opinion on which bill the FBI favored, but stated the FBI would support whatever bill Congress passed. Chairman Rehmann expressed concern on the capture and submission of fingerprints by

the qualified entity. Chairman Rehmann questioned if the state repositories were expected to shoulder that burden and if there are any provisions for funding.

The next legislative activity discussed was the "Our Lady of Peace Act". This Act would amend the Brady Handgun Act to require the Attorney General to secure, at a minimum, quarterly reports. It would require USINS to transmit relevant records of individuals disqualified from acquiring firearms on illegal aliens, visitors on student visas, and visitors on tourist visas, to the AG for inclusion in the National Instant Criminal Background Check System (NICS). This Act would also require states to provide information on individuals committed to mental institutions for inclusion in the NICS.

Next, Mr. Bobby Hamil, Criminal Information Coordination Unit Chief, FBI CJIS Division, provided an update on the Patriot Act and HAZMAT. Mr. Hamil briefly described CJIS involvement with information sharing initiatives and directives. Post 9/11, terrorist data was entered into VGTOF. This file, previously, had not been used extensively due to privacy issues, as this data is considered intelligence based and not necessarily known criminal activity. In advance of the 2002 Winter Olympics, FBI Director Mueller mandated that all subjects of FBI investigations affiliated with terrorist activity be entered into the NCIC VGTOF. In April 2002, the Attorney General issued several directives for FBI operations: 1.) expand information sharing across database lines with all federal investigative agencies and 2.) coordinate the collection of foreign intelligence information related to terrorist data. Mr. Hamil mentioned that the FBI was also involved in responding to specific federal legislation. Section 403 of the Patriot Act legislation requires the FBI and the Department of State to work together to integrate FBI/DOS data, in particular, NCIC Hot File data. The statute further spelled out that if a hit came from III, that it would follow up with a fingerprint submission to the FBI to either confirm or hopefully make a determination if it's a positive hit or not. Section 113 of the Aviation Transportation and Security Act, mandated that background checks or security assessments be conducted on all foreign flight school students in the United States. Section 1012 of the Patriot Act, which is for the Hazmat endorsement, mandated that every licensee must undergo a background check before being issued a hazardous materials license. Section 1214 of the Port and Maritime Security Act would amend the Merchant Marine Act to establish a program to ensure greater security for United States seaports by conducting criminal history record checks on individuals having unrestricted access to controlled areas or access to security, as well as require capture of data on cargo theft offenses. Chairman Rehmann requested that the FBI report to the Compact Council when there is movement on any of the proposed bills.

Compact Council Action: Major Huguley made a motion that the Council go on record to express its continuing concern regarding implementation of the background requirements of the hazardous materials portion of the Patriot Act. The Council fully supports the ongoing efforts of the Chairman to communicate Council concerns to other authorities and encourages the continuation of the Council's efforts to explore various means to implement this law in a manner consistent with appropriate use of state and local resources up to and including the possible use of contacts with the states. The motion was seconded by Mr. Rusty Featherstone. The motion carried.

Topic #7 Status Update on the Possible Expansion of the Definition of "Criminal Justice" in the Code of Federal Regulations (CFR) and the United States Code (U.S.C.)

Mr. Moyer presented this topic. He reported that the request for possible change in the definition of "Criminal Justice" arose two years ago at a Compact Council meeting. Major Huguley suggested looking at the definition since the same definition had been in existence for the last 25 years. Major Huguley's suggestion on expanded/modified language to include categories to "prevent crimes" was reflected in the topic paper presented to the Council. There was also consideration given to using "prevention" in some form, and further discussions on criminal defense and juvenile proceedings. The motion from the May 2001 Compact Council meeting was to refer the topic to the CJIS Advisory Policy Board (APB), to revisit and consider if changes to the CFR to allow criminal justice category to include some categories in prevention would be advisable. This topic was forwarded through the working groups, subcommittees and the APB. The FBI Director signed off on the APB's recommendation and currently CJIS staff is working on the proposed changes to the CFR to be published in the Federal Register. Lt. Col. Harmon questioned the difference between the statutory definition in the Compact and the regulatory definition in the CFR. Mr. Moyer stated that the definitions, although similar, have some differences. He said that the limited change to the CFR definition will allow some prevention. Lt. Col. Harmon was concerned that this would be very problematic because there would not be a consistent definition for the "administration of criminal justice." Chairman Rehmann suggested letting the FBI handle this and they would send the proposed CFR changes through the Department of Justice for review.

Compact Council Action: This topic was accepted as information only.

Topic #8 Sanctions Committee Report on Proposed Sanctions Rule

Ms. Uzzell, Chairman of the Compact Council Sanctions Committee, provided a summary on the proposed Sanctions Rule. She mentioned that the proposed Rule has been reviewed by the Sanctions Committee and the Standards Committee. The draft that Ms. Uzzell presented will undergo another review by the Sanctions Committee before it is submitted to the Compact Council for the rule-making process. The Compact Council would be establishing this Rule in an effort to protect the accuracy and privacy of the records and ensure authorized access to records for particular authorized noncriminal justice purposes. Procedures would be used to determine compliant conduct and responsible use of III records and for addressing violations should misuse occur. The Rule would act as public notice that violation and/or misuse of authorized access might result in sanctions from the Compact Council, which may include suspension of services should the violation be found egregious or impose serious risk to the integrity of the III system.

Ms. Uzzell stated that the intention of the Committee is to work cooperatively with agencies to seek voluntary compliance by all means and that the sanctions process is the absolute end result where states haven't been able to secure voluntary compliance. Ms. Uzzell mentioned that typically most people think of punishment when they think of sanctions. Ms. Uzzell ensured the Council that the Sanctions Committee has developed the rule with the objective of helping

states be compliant with the Compact and not as a punitive process. The Sanctions Committee should convene prior to the next Council meeting for another opportunity to further refine the proposed Rule.

Compact Council Action: *This topic was accepted as information only.*

Topic #9 **Standards Committee Report on the Briefing Document Review - A Safer Nation: Improving Criminal Background Screening for Volunteers and Positions of Trust**

Lt. Col. Harmon provided an update on the "Safer Nation" document. The Chair had previously requested Compact Council members to provide comments on the concepts outlined in the document. The comments received thus far have been valuable. The Standards Committee review of this document was limited to the weaknesses and proposed initiatives as outlined in the handout. (See Attachment 3). Mr. Joe Bonino suggested adding language to distinguish between those points relevant to rolled fingerprint techniques and technologies and flat fingerprints. It should be noted that cost of capture devices for flat fingerprinting will be less expensive than current live scan. Ms. Uzzell suggested efforts to establish a national task force to formulate model guidelines as a more appropriate way to provide assistance than developing screening criteria. Lt. Col. Harmon noted that the Council felt that model guidelines would be helpful even if local agencies needed to provide further details.

Compact Council Action: *This topic was accepted as information only.*

Additional Issue

____ Mr. Cabell Cropper, Executive Director, National Criminal Justice Association (NCJA), addressed the Council on the role of the National Criminal Justice Association. Mr. Cropper commented on the *Justice Information Privacy Guideline*, an NCJA report compiled as a result of a grant with the Bureau of Justice Statistics. (See <http://www.ncja.org/pdf/privacyguideline.pdf> for a copy). NCJA is involved in the field of integrated justice and with states and locals in developing integrated justice systems. The document focus is aimed at policy to guide discussions on developing privacy and public access.

Over the last two years NCJA has been involved in a series of working groups addressing the issue of privacy and public access. The NCJA represents state administrators and state criminal justice planners who administer federal funds to state and local criminal justice and law enforcement agencies. NCJA's focus is policy and coordination among the various components of the criminal justice system. The members, approximately 750, represent all components of the criminal justice system ranging from law enforcement investigations to defense prosecution, from the judicial system to corrections.

Mr. Cropper is also a member of the Global Information Network Committee and Chair of the Privacy and Information Quality Working Group which is considering the uses of flat fingerprints for identification purposes. One possible use of flats is linking disposition to arrests through flat fingerprinting. Mr. Cropper concluded by saying that the privacy working group will be meeting again on December 3, 2002, for another look at the issue of privacy and public access.

Mr. Cropper can be reached at www.ncja.org or via telephone number is (202) 685-8550, if Council members have any questions.

Compact Council Action: This topic was accepted as information only.

Topic #11 Status on Implementation of the NFF "Fix"

Ms. Cathy Morrison, Interim FBI Compact Officer, presented this topic. She reported that the Standards Committee and staff from the FBI CJIS Division have reviewed the fingerprint and rap sheet processes which involve an NFF response. After lengthy discussion on the NFF process, several recommendations were made to facilitate merging NFF state sheets with the FBI rap sheets and send responses over the wide area network. One of the recommendations was that CJIS staff should discontinue the manual review of NFF responses prior to dissemination. A customer service phone number would be provided for questions relating to the information provided on the response rap sheet. CJIS staff will be sending out such notification (see CJIS Information Letter 02-2, dated October 21, 2002) to the user community and will monitor the process through a transition stage for approximately 90 days. An upgrade to TCP/IP scheduled for November 2002 should also improve response time and work flow. CJIS staff will be able to monitor the NFF response traffic from the states, determine the average response time for rap sheets, assess queue capacity, and finalize an implementation strategy for the merged response. Ms. Morrison reported that CJIS anticipates a mid-2003 implementation date for implementing a merged NFF state/federal rap sheet.

Chairman Rehmann mentioned that Montana is now an NFF state and urged CJIS staff to continue its efforts and develop a schedule for other states (Oklahoma, Maine, and Colorado, etc.), that are ready to move forward with NFF implementation. Ms. Morrison indicated she would coordinate this request with the appropriate persons at the FBI. Lt. Col. Harmon expressed that increasing NFF participation must be a balanced approach, without degrading customer service. Lt. Col. Harmon commented thus far the FBI has balanced the process quite well.

Compact Council Action: This topic was accepted as information only.

Topic #10 **Standards Committee Report on NFF Qualification Requirements**

Lt. Col. Harmon presented this topic. Demonstrating successful compliance to the NFF Qualification Requirements is essential for new NFF state implementation. Revision to the NFF Qualification Requirements document is an ongoing effort. The Standards Committee have broken the document into three major areas: 1.) NFF requirements for state involvement, 2.) NFF requirements for the FBI, and 3.) audit criteria. Next, Lt. Col. Harmon discussed the most recent proposed changes to the NFF Qualification Requirements. Ms. Morrison commented on the suggestion to delete some of the verbiage that was a duplication of the Compact. Ms. Morrison petitioned the Compact Council to consider retaining those portions, as non compact states considering participating in NFF may not be as familiar with those requirements which are inherent to the Compact itself. The Council agreed to this modification.

Compact Council Action: This topic was accepted as information only.

Topic #12 **Standards Committee Report on the Use of the Interstate Identification Index (III) to Background State and Local Criminal Justice Agency Applicants' References, Relatives, Friends, and Associates**

Mr. Corr presented this topic. FBI CJIS was asked to address the question of whether local criminal justice agencies are authorized to use III for background inquiries on criminal justice applicants' references, relatives, friends, and associates. CJIS staff researched the issue, however no documentation was discovered to authorize state or local criminal justice agencies to use III to conduct background checks on the applicants' references, relatives, friends, and associates.

Compact Council Action: This topic was accepted as information only.

Topic #13 **Standards Committee Report on U.S. Customs Request for Access to III Using Purpose Code I**

Lt. Col. Harmon presented this topic. The Council previously dealt with a similar request for agencies other than State Identification Bureau to access Purpose Code I. Customs has recently requested direct access for Purpose Code I use due to the time involved in receiving the NFF portion of the record. Lt. Col. Harmon stated that the FBI is rapidly moving towards the final solution that will allow timely electronic responses which will include the NFF record. This solution should be in place in the near future which will address Customs request.

Compact Council Action: This topic was accepted as information only.

Topic #15 **Standards Committee Report on Standards/Procedures to Verify the Identity of a Person Fingerprinted**

Lt. Col. Harmon presented this topic. He discussed the question of whether or not there should be a standard to require identification verification of a person being fingerprinted for a noncriminal justice background check. A similar issue has been addressed by AAMVA relative to breeder documents for drivers licenses. It may be premature to enact a standard at this time due to

a wide variability of processes among the states and federal entities that conduct noncriminal justice checks. The Standards Committee recommended not to set a standard at this time, but to monitor the advances made by AAMVA. The Committee recommended that the Council monitor the AAMVA efforts to gain a better understanding prior to revisiting the issue of identity standards for persons being fingerprinted.

Compact Council Action: This topic was accepted as information only.

Additional Issue

_____ Chairman Rehmann read a letter from the Montana Department of Justice which extended an invitation to the Council to hold its spring 2003 meeting in West Yellowstone, Montana. Chairman Rehmann expressed interest in working with the FBI staff on this initiative.

Compact Council Action: This topic was accepted as information only.

Additional Issue

_____ Mr. Gary Barron, FBI CJIS Division, presented an update on the National Fingerprint Based Applicant Check Study (NFACS). The mission of NFACS is to examine the feasibility of developing a rapid inexpensive way to process background checks for authorized noncriminal justice purposes, with a focus on using flat fingerprint impressions. The study is comprised of five components. One of the components is the Texas initiative. Texas is looking at utilizing LiveScan devices that will collect rolled prints but will also create a virtual card from the flat images obtained from a standard submission type. Texas will check both of those images against its AFIS. In addition, the FBI will conduct internal testing related to flat fingerprints versus rolled. The FBI laboratory will also take a look at what impact flat images may have on the latent community. The final component is the Ohio WebCheck pilot project. Changes have been made to the IAFIS operational environment that will allow CJIS to receive flat images from the Ohio prototypes. Ohio prototype scanners will submit 10 flat images. Additionally, Ohio will also provide 10 rolled prints for the same applicant. This will provide a live environment processing and comparison of one-to-one flat images against rolled images related to the same applicant.

Next, Mike Powers, provided a detailed explanation of Ohio's Webcheck progress. Ohio has deployed 92 prototypes. Training individuals on operating the prototypes was completed by the end of September. The livescans are deployed at sheriff offices, nursing homes, schools, and several private organizations as well. Ohio is assessing quality standards and capturing the data quality on each of the digits. Rejects at both the state and federal level will be reviewed through transaction logs to find out whether or not those image qualities were sufficient. Mr. Powers stated that he expects to have additional details on flat to rolled information for the next meeting.

Compact Council Action: This topic was accepted as information only.

Topic #14 Standards Committee Report on U.S. Department of Justice (DOJ) Requirements for System Use

Ms. Pat Rummel, Supervisory Computer Security Specialist, presented this topic. CJIS staff recently reviewed user agreements to ensure that DOJ's recent security requirement changes

are incorporated in the user agreements. Staff located two requirements that are currently not stated in the user agreements. One is the requirement for official notification to the FBI within four hours of a security incident with the network. There has been discussions on changing the verbiage so that the policy will state "within four hours of resolution of the security incident on a network, unless the incident compromises the CJIS Division systems." If CJIS systems may be compromised, the CTA shall immediately notify the CJIS Information Security Officer and DOJ personnel. Staff currently have point of contact names and phone numbers and the policy available on the LEO.

The second requirement is to allow DOJ to periodically test the ability to penetrate the FBI's network through an external network connection to the system. The recommended changes are recommended for incorporation into the security policy and not the user agreements.

Lt. Col. Harmon reported that the Standards Committee reviewed the changes and recommended endorsing the changes. However, he noted that it wasn't really clear what the security requirements are for the noncriminal justice side and should be examined. The Compact Council questioned defining the term "resolution" in the context of a compromise. It was not apparent when "resolution" would occur - discovery of the incident or stopping the attempt.

Compact Council Action: Lt. Col. Harmon made a motion to endorse the proposed changes (See Attachment 4 - changes in bold print) to the CJIS Security policy. The motion was seconded by Mr. Paul Heppner. The motion carried.

Ms. Cathy Morrison, Interim FBI Compact Officer, asked Security and Access Subcommittee Chairman Mr. Charlie Pruitt if a Council representative would be of assistance as this topic is handled in the Security and Access Subcommittee. Mr. Pruitt welcomed a Compact Council representative to attend the Security and Access Subcommittee meetings and share the Council perspective. Chairman Rehmann appointed Rusty Featherstone to be the Council's representative to the Security and Access Subcommittee meeting during October 2002 in Las Vegas.

Topic #16 **Standards Committee Report on Maintenance and Dissemination of Federal Arrests from State Files**

Lt. Col. Harmon presented this topic. By way of background information, presently there are III requirements that prohibit the dissemination of other states criminal history record information. Federal arrest data is handled in diverse ways at the state level. Recently, a compact state inquired whether the draft NFF Qualification Requirements specifies that a state cannot disseminate state and/or federal information from the state repository and would this preclude disseminating federal information if the federal agency asks for states to house the data. The Committee felt that the draft standard should remain intact which provides that an NFF state shall not include in its III record response any other state and/or federal criminal history information maintained in its files.

The second issue relates to a data quality and record maintenance issue. Federal agencies reporting the arrest at the state level may not have a process for record maintenance. There may not be an agreement between agencies to update the federal arrest information housed at the state repository. Therefore a state could be disseminating erroneous federal arrest information. The Council also discussed if a state should be prohibited from routing federal agency fingerprints to the FBI. The Standards Committee recommended to make no change to the current policy.

Compact Council Action: *This topic was accepted as information only.*

Topic #17 **Standards Committee Report on the Update on the Development of a Non-ident Applicant Database**

Ms. Barbara Wiles, FBI CJIS staff, presented the following background information: Mr. William Seibert, Missouri Control Terminal Officer, proposed the retention of applicant fingerprint images, with an assigned unique number identifying the subject as a civilian without a criminal record. An added capability to query the assigned unique number for subsequent record checks for updated clearance without resubmitting the fingerprints was also suggested. In the spring of 2000, the CJIS APB strongly endorsed this concept; the Council requested the FBI to further study the viability of developing the applicant identification system.

As a result of 9/11, other requests similar in nature have been received by CJIS. The authority to retain nonfederal applicant fingerprints and use of these fingerprints is not quite as clear. The CJIS Access Integrity Unit has recently requested an opinion from the Office of General Counsel on this issue. This opinion is still pending.

The Standards Committee recognized some states have statutes which prohibit the FBI from maintaining applicant data and/or fingerprint impressions. Due to these restrictions, the Standards Committee would support the development of a non-ident applicant database as long as the state can on a per applicant/submission basis indicate whether or not the applicant information may be retained at the FBI.

Compact Council Action: *Lt. Col. Harmon made a motion that the Compact*

Council endorse a concept of non-ident applicant database to be housed at CJIS. The motion was seconded by Major Mark Huguley. The motion carried.

Chairman Rehmann suggested adding a caveat to the motion stating maximum flexibility for states participation.

Topic #18 Proposal to Increase Data Content on Electronic Fingerprint Responses

Mr. Gary Barron, FBI CJIS Division, presented this topic. At the last Council meeting in May, 2002, Mr. Barron advised the Council of a survey posted on LEO to identify potential additional data elements which could be incorporated into the submission results. Council members were encouraged to provide input via the survey. It was noted that some authorized submitters were not receiving adequate information on electronic applicant fingerprint responses making it difficult to forward the response to the local contributor. It was also noted that fingerprint contributors also had difficulty matching up the electronic fingerprint response with the original electronic fingerprint submission. Mr. Barron provided an update on system impact. CJIS ITMS estimates six months effort and approximately \$150,000 to \$200,000 to modify the systems to accommodate these changes.

Compact Council Action: Lt. Col. Harmon made a motion to refer the concept of adding additional fields to the SRE responses back to the IIETF to develop a specific proposal regarding which additional data elements should be added to the response. The motion was seconded by Mr. Paul Heppner. The motion carried.

Additional Issue

Chairman Rehmann informed the Council that he had appointed Mr. Mike Powers to the Council to serve the remainder of Lt. Cliff Daimler's term as a state/local criminal justice representative.

Topic #19 Benefits Survey on Criminal History Record Information (CHRI) for Noncriminal Justice Purposes - State vs. FBI Rapsheet

Ms. Cathy Morrison, Interim FBI Compact Officer, presented this topic. At the August Standards Committee meeting, a proposal was discussed on the viability of conducting a survey to analyze the differences in criminal history record information maintained at the state vs. the FBI level. One of the perceived benefits of conducting such a survey would be to obtain corroborating data, which would indicate the percentage and possibly the types of distinctions between state and federal rapsheet data. This data would be beneficial to determine the affect of decentralization. The Standards Committee endorsed, in concept, the proposal to conduct such a survey. The Committee advised that further definition of the study methodology would be necessary. The Committee also recommended that more current arrest records maintained at the repository level be used in the survey rather than old ones. Chairman Rehmann suggested that Council members consider the request and then forward comments to Ms. Cathy Morrison, Interim FBI Compact Officer, by December 1, 2002. FBI staff would compile the comments received by the Council and have a report prepared for the next meeting for further discussion.

Additional Item

Mr. Marcel Reid, Illinois State Police, questioned whether the Memorandum of Understanding with the Department of Housing and Urban Development (HUD) still existed. Mr. Corr responded that HUD was aware that the MOU has expired, however HUD is still operating under the old one. HUD is in the process of drafting a new MOU. Chairman Rehmann has previously requested HUD attend a Council meetings and discuss the status of the MOU. HUD has been noncommunicative. Mr. Corr reported the Council would be notified of further communications from HUD. Chairman Rehmann would request HUD be in attendance at the next meeting.

Closing Remarks

Chairman Rehmann closed the meeting by providing dates for the upcoming meetings. It was suggested that the Sanctions Committee could meet in conjunction with the SEARCH meeting the last of January 2003.

The meeting was adjourned at 11:00 a.m.